the notes in question been received by the local agent for immediate remittance to the foreign office they would have been free from taxation as property *in transitu*. *Cf. Kelley* v. *Rhoads*, 188 U. S. 1. Since, however, they were to be held till maturity and to be used in part as capital in the local business, they would seem to have become incorporated with the mass of state property, and therefore subject to the tax imposed.

TRADE MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — NAME REPRESENTING FICTION CREATED FOR BUSINESS PURPOSES. — The plaintiffs manufactured two varieties of candy known by specific names, and sold them purporting to act as "Sole Selling Agents for the Climax Confection Company." Subsequently, by a mere coincidence, the defendants, acting in the utmost good faith and caution, adopted the same name as their sole business name. *Held*, that the plaintiffs did not so adopt and use the name "Climax Confection Company" as to entitle them to protection against the defendants' use of it. *Shoemaker* v. *Ulmer*, 63 Leg. Int. 128 (Pa., C. P. No. 3, Phila. Co.).

It is now well established that business and trade names, under proper circumstances, will be protected against such use of them by another as injures the property right of good will in a business. See 10 HARV. L. REV. 280, 286–295. Yet in this class of cases, the courts have rigorously applied the equitable principle that the plaintiff must commend himself to the court in order to obtain its aid. Thus a plaintiff who is conducting an illegal business, or selling a misrepresented article, or who has adopted a deceptive name, will not be assisted. *Portsmouth Brewing Co.* v. *Portsmouth Brewing, etc., Co.*, 67 N. H. 433; see *Kohler Mfg. Co.* v. *Beeshore*, 59 Fed. Rep. 572, 574; 6 COLUMBIA L. REV. 248. Similarly, from reasons of public policy, courts have generally been reluctant to protect common generic and descriptive names, or names having an undue tendency to hinder competition. See *Canal Company* v. *Clark*, 13 Wall. (U. S.) 311, 323. In the present case there is no reason why the court could not have protected the plaintiffs' use of the name in question, although it stood for no business nor article but merely for an imaginary company. But as the granting of relief is eminently a matter for the court's discretion, it might well refuse to encourage such business fictions by furnishing protection to names applied thereto.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

PRIVITY BETWEEN CONCURRENT ADMINISTRATORS OF THE SAME DECEASED. — A writer in a recent periodical maintains that a judgment for the defendant in an action by an administrator should bind another administrator of the same deceased in another jurisdiction, because there exists between the two an "official privity." *The Relation to each other of different Administrators of the same Deceased*, by Thaddeus D. Kenneson, 6 Columbia L. Rev. 15 (January, 1906). This result Mr. Kenneson reaches in two ways. Administrator A, he says, is, in the eye of the law, the "embodiment" of the deceased. As much may be said for administrator B. A judgment against A is in effect one against the deceased, and a judgment against the deceased should conclude B. Again, both A and B represent the same group of creditors. Since a judgment against A binds the creditors it should be equally effective against their other representative.

Leaving aside for the moment the intrinsic merits of Mr. Kenneson's position, one may explain upon other grounds most of the cases which he cites to uphold it. That a sovereign has power to deal with chattels with-

in its territory is an undoubted principle of the Conflict of Laws. It follows that upon the death of an intestate there fall to each jurisdiction, to be administered as a separate and distinct estate, the tangible assets of the deceased found within its borders. 1 WOERNER, ADMIN., 359 *et seq.* Over these assets the court's power is exclusive and absolute, and, irrespective of privity, foreign tribunals will refuse to review its disposition of them even though it labored under an error as to certain material facts. See *Holcomb* v. *Phelps*, 16 Conn. 126. As a simple debt is an intangible and floating asset, without situs, payment may be compelled by the first administrator who can fasten upon the debtor within his jurisdiction. Once an administrator has received payment and so reduced the claim to possession, the obligation is discharged as against the world. See *Wilkins* v. *Ellett*, 108 U. S. 256. There have even been cases to the effect that a mere judgment without satisfaction merges the debt and stamps it with the plaintiff's name so as to remove it from the power of other administrators. See *Biddle* v. *Wilkins*, 1 Pet. (U. S.) 686. But a judgment against an administrator-plaintiff, which is the case Mr. Kenneson puts, is plainly not the taking possession of an asset but a holding that there is no asset to which he or his privies are entitled.

Upon the theory, assumed by the writer, that each personal representative continues the *personam* of the deceased, privity may perhaps be worked out and a somewhat desirable result be reached. But the modern tendency is away from the fiction suggested and towards considering a so-called "personal representative" merely as an appointee of the court, perhaps nominated by the testator, but deriving his estate and authority from the court in which they were vested. See *Byers* v. *McAuley*, 149 U. S. 608, 618. There can be no privity of appointment between these appointees of independent jurisdictions such as may be found between successive administrators in the same state. The estates are as distinct as are several receiverships of the same corporation. From the mere fact that these estates once comprised the property of one person can arise no privity between the appointees. See *Taylor* v. *Barron*, 35 N. H. 484. Nor can the fact that each jurisdiction gives to any creditor a right to bring suit against its administrator be more effectual until the claim has been satisfied. Considering the jealousy with which courts are apt to guard the interest of creditors and other claimants who appeal to them, it may be long before they bind their agents by the carelessness or the possibly collusive conduct of foreign administrators, through recourse to Mr. Kenneson's reasoning. See *Brodie* v. *Bickley*, 2 Rawle (Pa.) 431, 437; *Low* v. *Bartlett*, 8 Allen (Mass.) 259, 264. But see *Goodall* v. *Marshall*, 14 N. H. 161.

It must be admitted that the authority upon the precise case Mr. Kenneson discusses is meager. But it is not easy to distinguish the mass of cases in which an administrator was plaintiff by classing these, as the writer does, with *in rem* proceedings. Although they involve the question of the existence of assets to meet the plaintiff's claim the decree is generally said to be in substance and in form against the defendant personally. See *Stacy* v. *Thrasher*, 6 How. (U. S.) 44, 60. It would seem, therefore, that the finding that the plaintiff was a creditor of the deceased should bind parties and privies in subsequent litigation. Following Mr. Kenneson's argument other administrators are privies. Yet the decisions declare that there is no privity and that no other administrator is affected by the previous adjudication.

ABUSE OF PERSONAL INJURY LITIGATION. *Clarence A. Lightner, R. B. Newcomb, Roy O. West, Percy Werner, Orla B. Taylor, Howard Bryant, J. L. Quackenbush, Russell Duane.* 18 Green Bag 193.

AMERICAN VERSUS BRITISH ECCLESIASTICAL LAW. *Epaphroditus Peck.* Discussing the Free Church of Scotland case. See 18 HARV. L. REV. 310; 6 Columbia L. Rev. 137. 15 Yale L. J. 255.

BILL OF LADING AS COLLATERAL SECURITY. *Thomas B. Paton.* Giving the provisions of the bill introduced into Congress and the arguments of counsel in favor thereof. 23 Banking L. J. 187.

BLACKMAIL AND EXTORTION. II. *James W. Osborne.* The second in a series of articles treating the subject largely with reference to New York law. 4 Bench & Bar 90.

CAN A COURT OF EQUITY CIRCUMVENT THE LAW? *Joseph M. Sullivan.* 68 Alb. L. J. 37.

COMPENSATION OF MEDICAL WITNESSES, THE. *H. B. Hutchins.* 4 Mich. L. Rev. 413.

CONSPIRACY TO COMMIT ACTS NOT CRIMINAL PER SE. *Amasa M. Eaton.* Arguing that as a matter of common law and reason a combination to do an act which by itself is not criminal is not an unlawful conspiracy. 6 Columbia L. Rev. 215.

DARTMOUTH COLLEGE PARALOGISM, THE. *William Trickett.* 4 Am. L. Rev. 175.

DEMAND ON PRINCIPAL BEFORE ACTION AGAINST GUARANTOR. *William P. Rogers.* 6 Columbia L. Rev. 229.

DEVELOPMENT OF INTERNATIONAL LAW. III. *Edwin Maxey.* 40 Am. L. Rev. 188.

EMANCIPATION AND CITIZENSHIP. *Gordon E. Sherman.* Discussing and deprecating the conception of a status between those of slavery and citizenship. 15 Yale L. J. 263.

EMPLOYERS' LIABILITY, AS AN INDUSTRIAL PROBLEM. *Roger S. Warner.* 18 Green Bag 185.

GROWING COMPLEXITIES OF LEGISLATION, THE. *Don E. Mowry.* 40 Am. L. REV. 212.

GROWING CONCEPTION OF NEUTRALITY. *Hannis Taylor.* A brief consideration of the modern development of the rights and duties of neutrals in regard to the enemies' warships. 40 Am. L. Rev. 252.

INJUNCTIONS AGAINST BOYCOTTS AND SIMILAR UNLAWFUL ACTS. *James Wallace Bryan.* A summary of American law. 40 Am. L. Rev. 196.

INJUNCTION AS A REMEDY TO RESTRAIN PASSAGE, TEST VALIDITY, AND PREVENT ENFORCEMENT AND VIOLATION OF MUNICIPAL ORDINANCES. *Eugene McQuillin.* Collecting the authorities. 63 Cent. L. J. 257.

IS A PARTY TO AN ACTION IMMUNE FROM SERVICE OF CIVIL PROCESS WHILE ATTENDING COURT IN A STATE OTHER THAN THAT OF HIS RESIDENCE? *Sumner Kenner.* Reviewing the conflicting decisions and maintaining that this question must be answered affirmatively. 62 Cent. L. J. 280.

JUDGES IN EUROPE. *Anon.* Explaining the different methods of selecting judges in England, on the Continent, and in the United States, with a comparison to the advantage of England. 29 N. J. L. J. 113.

JURY SYSTEM, THE. *S. M. Bruce.* An historical discussion of the growth of the grand jury, advocating the present substitution of a travelling judge of fact for this jury. 40 Am. L. Rev. 222.

LAW OF OFFICERS, THE. *Leonhard Felix Fuld.* Remarking upon the exceptions to the strict doctrine of separation of powers of judicial, executive, and administrative officers. See 19 HARV. L. REV. 203. 14 L. Stud. Helper 71.

MONEY BORROWED BY AGENT WITHOUT AUTHORITY. *Anon.* 50 Sol. J. 340.

MORAL PERSONALITY AND LEGAL PERSONALITY. (Contin.) *F. W. Maitland.* 5 Can. L. Rev. 166.

NATURE AND EXTENT OF AN AGENT'S AUTHORITY, THE. *Floyd R. Mechem.* 4 Mich. L. Rev. 433.

NEED OF AN INTERNATIONAL CONFERENCE. *Edwin Maxey.* Advocating a conference for the solution of questions of international law raised by the Russo-Japanese war. 68 Alb. L. J. 35.

NEW WORKMEN'S COMPENSATION BILL, THE. II. *Anon.* 120 L. T. 515.

NOTES ON THE HISTORY AND DEVELOPMENT OF THE ROMAN-DUTCH LAW. (Continued.) *J. W. W.* 23 S. African L. J. 10.

PRESUMPTIVE NEGLIGENCE. *Silas Alward.* 26 Can. L. T. 191.

PROTECTION BY EQUITY OF CORPORATE NAMES AGAINST UNFAIR COMPETITION. *H. C. McCollom.* Contending that the same principles which govern trademarks should apply to corporate names, and that fraud should not be essential to an injunction. 6 Columbia L. Rev. 244.

SECTION 117 OF THE CONSTITUTION. *F. L. Stow.* Commenting on a recent decision as to the meaning of "resident" in the clause of the Australian Constitution which forbids discrimination among residents of different states. 3 Commonwealth L. Rev. 97.

TENTATIVE CODIFICATION OF THE OLD TESTAMENT LAWS, A. *Charles Foster Kent.* 15 Yale L. J. 284.

TREATIES AS SOURCES OF INTERNATIONAL LAW. *Edwin Maxey.* 11 Va. L. Reg. 863.

WHETHER A GRANT BY DEED OF A FISHING OR HUNTING RIGHT IS LIMITED IN ITS SCOPE TO THE CONDITIONS WITHIN THE VIEW OF, AND SURROUNDING THE PARTIES AT THE DATE OF THE DEED, OR IS TO BE CONSTRUED RELATIVE TO THE ADVANCEMENT OF SOCIETY AND THE IMPROVEMENT IN FACILITIES AFFECTING THE EXERCISE OF THE GRANTED RIGHT? *Alexander H. Robbins.* 62 Cent. L. J. 238.

"WITHOUT PREJUDICE." *Anon.* Showing the interpretation of this phrase by English judges, when it has been used in correspondence between litigants. 70 Sol. J. 372.

WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY IN BELGIUM, ENGLAND, FRANCE, AND ITALY. *G. de Leval, R. Newton Crane, B. H. Conner, Henry Burnham Bonne.* 18 Green Bag 216, 220, 223, 225.

II. BOOK REVIEWS.

ENGLISCHES STAATSRECHT, mit Berücksichtigung der für Schottland und Irland geltenden Sonderheiten. Von Julius Hatschek. 1 Band: Die Verfassung. Tübingen: J. C. B. Mohr (Paul Siebeck). 1905. pp. xii, 669, 4to.

This book is part of the monumental "Handbuch des Oeffentlichen Rechts," projected more than a score of years ago by Professor Marquardsen and designed to cover, in a series of monographs by different writers, the political institutions of all civilized countries. Many volumes of the series have already appeared, varying no doubt in excellence, but as a rule of great value, and Dr. Hatschek's book deserves from the author's vast learning, thorough research, and analytical thought, a high place among them. To say that one does not always agree with all his conclusions, to feel that he sometimes pushes them too far, is, perhaps, merely to say that they are often new and striking.

The book before us, which is only the first volume of his work on the English government, deals with the constitution, or rather with the fundamental legal institutions, and is for that reason of special interest to lawyers. Naturally he approaches the subject from the point of view of a German jurist, and with his mind full of ideas of scientific jurisprudence and administrative law, which illuminate, even if at times they slightly distort, the image. Such a treatment enlarges the horizon of the student of the Common Law, by helping him to distinguish those legal conceptions which are of universal application from those which are peculiar to his own system. But while many books upon the English government have been written by foreigners, most of them have had a serious defect. Professor Hatschek points out (p. 23 *et seq.*) that almost all continental observers have studied English institutions when a crisis was present or threatened in their own country, deducing those principles which they believed were needed at home; and he shows how this was true of Montesquieu with his doctrine of the separation of powers, and of Gneist with his ideas of the nature of self-government. From such a source of error Professor Hatschek himself claims to be, and is, free; his examination having a purely scientific, not a political motive.

He lays great stress, and most properly so, upon the fact that the Roman Law was not adopted in England at the time of its general "*rezeption*," as the Germans call it, by the continental nations; and to this cause he rightly attributes a great part of what is characteristic in the legal thought and political institutions of the nation. For that reason England has, he says (p. 10), never had a systematic legal theory of the state; and in the sense of the German "Staatsrecht" that is true. Between the writers on politics and jurisprudence on the one hand, and the lawyers on the other, there has been, he tells us (pp. 13, 14), a cleft which began with the decay in the study of Roman Law early in the seventeenth century, and has never been bridged. He adds that continental observers have made the great mistake of supposing that the English political philosophers like Hobbes, Locke and the rest were expounding English "Staatsrecht" when they were really out of touch with the law, —